

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. CIV-19-95-G

DAVID P. NEWMAN, FIRST BANK &  
TRUST CO., MICHAEL D. KELLY,  
TAMI S. ROCKWELL,

Defendants.

**COMPLAINT**

Plaintiff, the United States of America, through its undersigned counsel, sets forth its complaint against the defendants as follows:

1. This is a civil action brought by the United States to enforce federal tax liens encumbering certain real property located in Stephens County, Oklahoma and to have the proceeds from a court-ordered sale distributed to the parties in amounts determined by the Court.

2. This complaint has been authorized and requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is commenced at the direction of a delegate of the Attorney General of the United States pursuant to 26 U.S.C. § 7401.

3. This Court has jurisdiction over this action based on 28 U.S.C. §§ 1331, 1340, and 1345 and 26 U.S.C. § 7403(a).

4. Venue in this district is based on 28 U.S.C. § 1391(b) because David P. Newman resides in this judicial district and the real property that is a subject of this action is located in this judicial district.

5. The plaintiff is the United States of America.

6. David P. Newman resides in Duncan, Oklahoma, within this judicial district, and is the taxpayer whose property is subject to the federal tax liens discussed below.

7. First Bank & Trust Co. is named as a defendant, pursuant to 26 U.S.C. § 7403(b), because it may claim an interest in the real property at issue in this complaint.

8. Michael D. Kelly is named as a defendant, pursuant to 26 U.S.C. § 7403(b), because he may claim an interest in the real property at issue in this complaint.

9. Tami S. Rockwell is named as a defendant, pursuant to 26 U.S.C. § 7403(b), because she may claim an interest in the real property at issue in this complaint.

**The Unpaid Tax Assessments of David P. Newman**

10. A delegate of the Secretary of the Treasury made assessments against David P. Newman for unpaid federal income taxes, interest, and penalties on August 8, 2005 (for tax years 2001, 2003, and 2004), September 12, 2005 (for tax year 2002), July 9, 2007 (for tax year 2002), November 28, 2011 (for tax year 2008). The total amount of the assessments was \$691,787.87.

11. Notices of the assessments referred to in paragraph 10 and demands for payment were sent to David P. Newman on or about the dates that the assessments were made. Despite the notices and demands for payment, David P. Newman has failed or refused to pay the outstanding trust fund recovery penalties.

12. A delegate of the Secretary of the Treasury made assessments against David P. Newman for unpaid federal employment taxes, interest, and penalties on June 4, 2007 (for tax periods ending 06/30/2005, 12/31/2005, and 12/31/2006) and December 28, 2009 (for tax periods ending 12/31/2007, 03/31/2008, 06/30/2008, and 09/30/2008). A delegate of the Secretary of the Treasury made assessments against David P. Newman for unpaid federal

unemployment taxes, interest, and penalties on June 18, 2007 (for tax year 2005) and December 28, 2009 (for tax year 2007). A delegate of the Secretary of the Treasury made assessments against David P. Newman a civil penalty, pursuant to 26 U.S.C. § 6721(e), for failure to file Forms W-2 with the IRS on July 12, 2010 (for tax year 2007). The total amount of the assessments was \$27,602.58.

13. Notices of the assessments referred to in paragraph 12 and demands for payment were sent to David P. Newman on or about the dates that the assessments were made. Despite the notices and demands for payment, David P. Newman has failed or refused to pay the outstanding trust fund recovery penalties

14. On August 4, 2015, the United States initiated an action to reduce to judgment the unpaid assessments made against David P. Newman, referred to in paragraphs 10 through 13. *See United States v. David P. Newman*, No. 5:15-cv-00848-F (W.D. Okla.).

15. On November 10, 2015, judgment was entered in favor of the United States and against David P. Newman regarding the unpaid federal income taxes, interest, and penalties made against David P. Newman, referred to in paragraphs 10 through 11, in the amount of \$1,152,966.51, plus interest on that amount accruing after November 5, 2015. *See United States v. David P. Newman*, No. 5:15-cv-00848-F (W.D. Okla.), ECF No. 7, 11/10/15.

16. On November 10, 2015, judgment was entered in favor of the United States and against David P. Newman regarding the unpaid federal employment taxes, unemployment taxes, and civil penalty made against David P. Newman, referred to in paragraphs 12 through 13, in the amount of \$22,892.35, plus interest on that amount accruing after November 5, 2015. *See United States v. David P. Newman*, No. 5:15-cv-00848-F (W.D. Okla.), ECF No. 7, 11/10/15.

**CLAIM FOR RELIEF – ENFORCE FEDERAL TAX LIENS AGAINST REAL  
PROPERTY OWNED BY DAVID P. NEWMAN**

17. The United States incorporates by reference the allegations in paragraphs 1 through 16.

*Subject Property #1*

18. The United States seeks to enforce federal tax liens that arose by virtue of the assessments referred to above and that encumber the real property located at 1512 West Plato Road, Duncan, Oklahoma (Subject Property #1).

19. On March 28, 2000, Tami S. Rockwell, conveyed Subject Property #1 to David P. Newman by warranty deed. The warranty deed was recorded with the Stephens County Recorder on March 31, 2000. A copy of the warranty deed is attached to this complaint as Exhibit 1.

20. Pursuant to the warranty deed, Subject Property #1 is legally described as follows:

SURFACE RIGHTS ONLY.  
The W/2 of the NW/4 of the NE/4 of the NW/4 of Section 29, Township 1 North, Range 7 West, LM,  
Stephens County, Oklahoma.

*Subject Property #2*

21. The United States seeks to enforce federal tax liens that arose by virtue of the assessments referred to above and that encumber the real property located at Rural Route 4, Box 129, Duncan, Oklahoma (Subject Property #2).

22. On August 30, 1996, Viola Mae Newman, also known as Viola Newman, conveyed Subject Property #2 to David P. Newman by warranty deed. The warranty deed was recorded with the Stephens County Recorder on August 30, 1996. A copy of the warranty deed is attached to this complaint as Exhibit 2.

23. Pursuant to the warranty deed, Subject Property #2 is legally described as follows:

Tract 1:

SE $\frac{1}{4}$  NE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  and N $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 22, Township 1 North, Range 4 West, I.M., Stephens County, Oklahoma, less and except an undivided 3/4ths interest in and to all of the oil, gas, petroleum, coal, asphalt and other minerals and mineral rights in and under and that may be produced from said lands, together with the right of ingress and egress at all times, for the purpose of mining, drilling and exploring said lands for said minerals and removing the same thereof as previously reserved heretofore; and,

Tract 2:

SURFACE AND SURFACE RIGHTS ONLY in and to the S $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, Township 1 North, Range 4 West, I.M., Stephens County, Oklahoma,

*The United States' Interest in the Subject Property*

24. By virtue of the assessments referred to above, notices and demands for payment, and the failure of David P. Newman to pay, federal tax liens arose on the assessment dates described in paragraphs 10 through 13 under 26 U.S.C. §§ 6321 and 6322, and attached to all property and rights to property then belonging to and/or later acquired by David P. Newman, including the real properties described in paragraphs 18 through 23.

25. The IRS filed notices of federal tax liens against David P. Newman with the Stephens County Recorder on August 22, 2005 (for tax years 2001, 2003, and 2004), March 30, 2006 (civil penalty for tax year 2001), June 9, 2008 (for tax year 2002), February 24, 2012 (for tax year 2008), August 17, 2015 (for tax years 2001, 2002, 2003, and 2004) (refiled notice), February 6, 2017 (tax year 2002) (refiled notice).

26. By reason of the foregoing, the United States is entitled to enforce its federal tax liens against the real properties described in paragraphs 18 through 23 to satisfy or partially satisfy the federal income and employment tax liabilities of David P. Newman.

WHEREFORE, the United States seeks judgment on its complaint as follows:

- (a) a determination that the federal tax liens identified in paragraph 24 are valid and subsisting liens that attached to all property and rights to property of David P. Newman, including the real property described in paragraphs 18 through 23;
- (b) an order that any defendant claiming an interest in the real properties described in paragraphs 18 through 23, superior to the federal tax liens described in paragraph 24, affirmatively demonstrate that interest;
- (c) an order that the federal tax liens be enforced, that the real properties described in paragraphs 18 through 23 be sold in a judicial sale, according to law, free and clear of any right, title, lien, claim or interest of any of the above-named defendants, and that the proceeds of the sale be distributed to such parties in such amounts as this Court determines;
- (d) that the Court award the United States its costs incurred herein and grant the United States such other relief it deems just and equitable.

Dated: February 1, 2019

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

/s/ Richard G. Rose

RICHARD G. ROSE  
D.C. Bar No. 493454  
Trial Attorney  
Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-2032  
e-mail: richard.g.rose@usdoj.gov

*Attorneys for the United States of America*

see Rec  
502 Doc

000088

65-5051

STATE OF OKLAHOMA  
STEPHENS COUNTY  
RECORDED OR FILED

# WARRANTY DEED Statutory Form - Individual

MAR 31 1 42 PM '00

BOOK 2330 88

BY JK (FPU)

## Know All Men by These Presents:

THAT, TAMI S. ROCKWELL, A Single Person, of Pima County, State of Arizona, party of the first part, in consideration of the sum of Five Hundred Thirty Five Thousand dollars and Zero cents (\$535,000.00) in hand paid, the receipt of which is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey unto DAVID P. NEWMAN of Stephens County, State of Oklahoma, party of the second part, the following described real property and premises situated in Stephens County, State of Oklahoma, to wit:

## SURFACE RIGHTS ONLY.

The W/2 of the NW/4 of the NE/4 of Section 29, Township 1 North, Range 7 West, I.M., Stephens County, Oklahoma.

Property Address: 1512 PLATO ROAD, DUNCAN, Oklahoma 73533

together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

TO HAVE AND TO HOLD said described premises unto the said party of the second part, his heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this 28<sup>th</sup> day of March, 2000.

Tami S. Rockwell  
TAMI S. ROCKWELL

Newman  
P.O. Box 751  
Duncan OK 73534

## INDIVIDUAL ACKNOWLEDGMENT Oklahoma Form

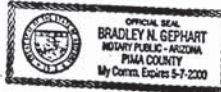
STATE OF OKLAHOMA  
Stephens County  
Documentary Stamps \$ 802.50

STATE OF ARIZONA  
COUNTY OF Pima

Before me, the undersigned, a Notary Public in and for said County and State on the 28<sup>th</sup> day of March, 2000, personally appeared, TAMI S. ROCKWELL, A Single Person, to me known to be the identical party who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Bradley N. Gephart  
NOTARY PUBLIC



Commission Expires: 5/7/2000

STEWART TITLE & ESCROW  
107 NORTH 10th STREET  
DUNCAN, OK 73533

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

Exhibit

1



178

60-959

7325  
60  
10210WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That VIOLA MAE NEWMAN, also known as VIOLA NEWMAN, a single person, party of the first part, in consideration of the sum of Ten and More Dollars (\$10.00) and other valuable consideration, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto DAVID P. NEWMAN, of Duncan, Ok, 73533, party of the second part, all of his right, title and interest in and to the following described real property situated in Stephens County, State of Oklahoma, to-wit:

Tract 1:

SE $\frac{1}{4}$  NE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  and N $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 22, Township 1 North, Range 4 West, I.M., Stephens County, Oklahoma, less and except an undivided 3/4ths interest in and to all of the oil, gas, petroleum, coal, asphalt and other minerals and mineral rights in and under and that may be produced from said lands, together with the right of ingress and egress at all times, for the purpose of mining, drilling and exploring said lands for said minerals and removing the same thereof as previously reserved heretofore; and,

Tract 2:

SURFACE AND SURFACE RIGHTS ONLY in and to the S $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, Township 1 North, Range 4 West, I.M., Stephens County, Oklahoma,

together with all improvements thereon and appurtenances thereunto belonging and warrant the title to the same.

TO HAVE AND TO HOLD said described premises unto the said party of the second part, his heirs and assigns, forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature, EXCEPT easements, right of ways, zoning ordinances, oil and gas leases and restrictions previously placed of record.

Signed and delivered this 30th day of August, 1996.

*Viola Mae Newman*  
VIOLA MAE NEWMAN

RECORDED RETURN TO:  
TEACH, SULLIVAN, SULLIVAN, & WATKINS  
P.O. BOX 160  
DUNCAN, OK 73534

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

Exhibit

2



179

## Warranty Deed

Page 2.

STATE OF OKLAHOMA )  
COUNTY OF STEPHENS ) ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 30th day of August, 1996, personally appeared VIOLA MAE NEWMAN, also known as VIOLA NEWMAN, a single person, to me known to be the identical person who subscribed the foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires: June 4, 2000

(S E A L)

Marlene Nichols  
NOTARY PUBLIC

c:\sheril\realprop\newman.wd

STATE OF OKLAHOMA  
STEPHENS COUNTY  
Aug 30 12 51 PM '96  
3003 178  
BY CK Notary Public



VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard G. Rose  
U.S. Department of Justice, PO Box 7238  
Washington, DC 20044 (202-616-2032)

**DEFENDANTS**

DAVID P. NEWMAN, FIRST BANK &amp; TRUST CO., MICHAEL D. KELLY, TAMI S. ROCKWELL

County of Residence of First Listed Defendant Stephens  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>LABOR</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. § 7401, 7403(a)

Brief description of cause:

Suit to enforce federal tax liens

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

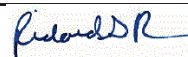
JUDGE

DOCKET NUMBER

DATE

02/01/2019

SIGNATURE OF ATTORNEY OF RECORD



Digitally signed by RICHARD ROSE  
DN: c=US, o=U.S. Government, ou=Dept of Justice, ou=TAX,  
cn=RICHARD ROSE, 0.9.2342.19200300.100.1.1=15001001622908  
Date: 2019.02.01 13:12:27 -05'00'

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE